

## § 74.5

## 38 CFR Ch. I (7–1–11 Edition)

(1) Exercise actual control or have the power to control the applicant or participant;

(2) Be a former employer or a principal of a former employer of any affiliated business of the applicant or participant, unless it is determined by the CVE that the relationship between the former employer or principal and the eligible individual or applicant concern does not give the former employer actual control or the potential to control the applicant or participant and such relationship is in the best interests of the participant firm; or

(3) Receive compensation from the applicant or participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually chief executive officer or president). The highest ranking officer may elect to take a lower salary than a non-veteran only upon demonstrating that it helps the applicant or participant.

(h) Non-veterans who transfer majority stock ownership or control of the firm to an immediate family member within 2 years prior to the application and remain involved in the firm as a stockholder, officer, director, or key employee of the firm are presumed to control the firm. The presumption may be rebutted by showing that the transferee has independent management experience necessary to control the operation of the firm, and indeed is participating in the management of the firm.

(i) Non-veterans or entities may be found to control or have the power to control in any of the following circumstances, which are illustrative only and not all inclusive:

(1) Non-veterans control the board of directors of the applicant or participant, either directly through majority voting membership, or indirectly, where the by-laws allow non-veterans effectively to prevent a quorum or block actions proposed by the veterans or service-disabled veterans.

(2) A non-veteran or entity, having an equity interest in the applicant or participant, provides critical financial or bonding support or a critical license to the applicant or participant which directly or indirectly allows the non-veteran significantly to influence busi-

ness decisions of the participant, unless an exception is authorized by the Office of Small and Disadvantaged Business Utilization.

(3) A non-veteran or entity controls the applicant or participant or an individual veteran owner through loan arrangements. Providing a loan guaranty on commercially reasonable terms does not, by itself, give a non-veteran or entity the power to control a firm.

(4) Business relationships exist with non-veterans or entities which cause such dependence that the applicant or participant cannot exercise independent business judgment without great economic risk.

[75 FR 6101, Feb. 8, 2010, as amended at 75 FR 80720, Dec. 23, 2010; 76 FR 3023, Jan. 19, 2011]

### § 74.5 How does CVE determine affiliation?

The Center for Veterans Enterprise applies the affiliation rules established by the Small Business Administration in 13 CFR part 121.

#### APPLICATION GUIDELINES

### § 74.10 Where must an application be filed?

An application for VetBiz VIP Verification status must be electronically filed in the Vendor Information Pages database located in the Center for Veterans Enterprise's Web portal, <http://www.VetBiz.gov>. Guidelines and forms are located on the Web portal. Upon receipt of the applicant's electronic submission, an acknowledgment message will be dispatched to the concern, containing estimated processing time and other information. Address information for the CVE is also contained on the Web portal. Correspondence may be dispatched to:

Director, Center for Veterans Enterprise (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0675)